Act No. 625, Acts of South Carolina, 1902. (23 S. C. Stats. at Large 1168.)

No. 625

AN ACT to Incorporate the "Charleston Union Station Company."

Whereas a Concurrent Resolution allowing this Bill to be introduced has been passed by a two-thirds vote of each House, as required by the Constitution; now,

Section 1. Be it enacted by the General Assembly of the State of South Carolina: That R. G. Erwin, Samuel Spencer, H. Walters, A. B. Andrews, C. C. Gadsden and W. G. Elliott, and such others as now are or may hereafter be associated with them, and their successors, be, and they hereby are constituted a body politic and corporate by the name and style of "Charleston Union Station Company" for the purpose of constructing, maintaining and operating a Union Passenger Station in the City of Charleston, South Carolina, and to that end to acquire by purchase, lease, condemnation as hereinafter provided, or otherwise, any and all property that may be necessary for the construction, maintenance and operation thereof in said city, and by such name to have all the general powers, and be subject to all the general restrictions, given and imposed by the laws of this State upon railroad corporations.

Sec. 2. That the Capital stock of said company shall not be less than fifty thousand dollars, nor more than two hundred and fifty thousand dollars, and shall be devided into shares of the par value of one hundred dollars each; that the said company may be organized and commence business when the sum of fifty thousand dollars has been subscribed to its capital stock; and the same may be increased from time to time by the stockholders of said company at any meeting thereof, to any amount not exceeding the sum of two hundred and fifty thousand dollars.

Sec. 3. That said company shall have the power to acquire within the City of Charleston, and the County of Charleston, South Carolina, such real estate as may be necessary on which to construct, maintain, and operate a union passenger station, comprising passenger depots, office buildings, sheds, storage rooms and yards; also main and

side tracks, switches, cross-overs, turnouts, bridges and other terminal railroad facilities, appurtenances and accommodations, suitable in size, location and manner of construction, to perform promptly and efficiently the work of receiving, delivering and transferring all passengers, baggage, and mail and express matter of railroad companies using the said station; and shall also have the power of contracting with any or all railroad companies entering the City of Charleston, by lease or otherwise, for the use by said railroad companies of such union station, and all terminal facilities connected therewith. Said corporation shall have power to acquire by purchase, lease, or assignment of lease, such real estate as may be necessary for the purposes of its incorporation, and it shall also have power to acquire for said purposes land or easements therein by condemnation, and shall be entitled to all the rights and privileges embraced in Section 1743 to 1755 of the Revised Statutes of South Carolina of 1893, and all Acts amendatory thereof.

Sec. 4. That whenever it may be necessary in order to enable said corporation to acquire and construct proper railroad facilities in said City of Charleston, South Carolina, or to connect such facilities with the tracks of any railroad company with which said corporation may have contracted to furnish such facilities, said corporation, with the consent of the proper authorities of the said City of Charleston, shall have the right to lay and operate a railroad track or tracks, a bridge or bridges, across, along or over, or under such of the streets of the City of Charleston as may be necessary for that purpose, and said corporation may, also, with such consent, construct such passenger station across or along, over or under, any such street, where it shall be necessary in order to furnish proper railroad terminal facilities in said city; but no street of said city shall be obstructed or interfered with until the consent of the proper authorities of said city shall have been first obtained.

Sec. 5. That as hereinbefore provided, the said corporation may contract by lease or otherwise, with any railroad company or companies for the use of its passenger depot or station, and its other terminal facilities, or any

part thereof; and any railroad company whose railroad enters the City of Charleston, shall have the right to lease from the said corporation the said passenger depot or station, or any part thereof, or to contract for the use of the same, such lease or contract to be made for such time and upon such terms as may be agreed upon by the parties thereto; and such railroad company or companies shall have the right, severally or jointly, or jointly and severally, to guarantee the principal and interest of such bonds as may be issued by the Charleston Union Station Company, and may in like manner guarantee the performance of any other contract whatsoever that such Union Station Company may make in regard to its corporate business; and any such railroad company or companies shall have the right to subscribe to, hold and dispose of, shares of the capital stock of the said Charleston Union Station Company, or the bonds which may be issued by it.

Sec. 6. The said Charleston Union Station Company shall have the right to maintain restaurants, news stands, telegraph and telephone offices, and such other appurtenances as are generally incidental to a union passenger station or to sell or lease such rights to others. ....

Sec. 7. Said corporation shall have the right to issue, negotiate and sell its bonds, either coupon or registered to such an amount or amounts as it may deem necessary, not to exceed the sum of two hundred and fifty thousand dollars, and to cause the same to be secured, by one or more mortgages or deeds of trust, conveying all of its property, rights, privileges and franchises to such trustee or trustees, and on such terms and conditions as it may deem proper.

Sec. 8. This Act shall take effect from and after its approval.

Approved the 20th day of February, A. D. 1902.

Section 2118-3(1), Code of Laws of South Carolina (1942)

§ 2118-3. Rules and regulations adopted pursuant to general and permanent laws.

(1) *Not become effective until certified and filed—number each separately.*—All rules and regulations adopted by

any officer, board, commission, or agency, when authorized to adopt rules and regulations by any general and permanent law of the State of South Carolina, shall become effective only after such rules and regulations shall have been properly certified to by the officer or agency adopting same, and have been filed in the office of the secretary of state. The secretary of state, on receipt of such rules and regulations, shall note on them date filed in this office, and permit the public to inspect them. Each such rule and regulation shall be numbered separately.

Section 8292-12, Code of Laws of South Carolina (1942)

§ 8292-12. Commissioners have general supervision.—The commissioners shall have the general supervision of all railroads and railways, express and telegraph lines in this State operated by steam, and shall examine the same and keep themselves informed as to their condition and the manner in which they are operated with reference to the security and accommodation of the public and the compliance of the several corporations with the provisions of their charters and the laws of the State; and to enforce the provisions of this chapter; and the provisions of this chapter shall apply to all railroads and railways, and to the corporations, trustees, receivers, or others owning or operating the same.

Section 8341, Code of Laws of South Carolina (1942)

§ 8341. Mandamus to require compliance—punishment for disobendience—costs and counsel fees.—If any railroad company shall neglect or refuse to comply with the provisions of this chapter or with the rules and regulations prescribed by said commissioners within the limits of their authority, such company shall be subject to a writ of mandamus, to be issued by any justice of the Supreme Court, or circuit court judge, upon application of the commissioners, or a majority of them, to require compliance with said laws or said rules and regulations, and failure to comply with said writ of mandamus shall be punishable as for contempt; and for any wilful violation of any said laws,

or failure to comply with the requirements of such rules or regulations, the court may award such costs and counsel fees, on the return of said writs, and after due deliberation thereon, as may be just.

Section 8415, Code of Laws of South Carolina (1942)

§ 8415. Public service commissioners may require railroads to erect depots.—The public service commissioners of this State are hereby invested with authority to require all railroads at junctional points and at such other points as the travel and public interest in their judgment shall justify in this State, to erect Union or other depots for the convenience and accommodation of the public, and if any railroad company shall refuse or fail so to do, when required by the said public service commissioners, within the time as specified by them, it shall forfeit and pay a sum of not less than fifty ($50.00) dollars per day after expiration of time as set forth in the order or circular of said public service commission, to be recovered in an action in any county in this State where such violation has occurred, and shall be in the name of the State of South Carolina. The commission shall institute such action through the Attorney General or any of the solicitors of the State. The said public service commissioners shall have the right to fix the time for the erection of depots.

Rule 14 of the South Carolina Public Service Commission, promulgated under Section 8292-12, Code of Laws of South Carolina (1942) and filed in the office of the Secretary of State of South Carolina on June 30, 1937.

Rule No. 14. Closing or discontinuing depots, stations and agencies. Each and every depot, flag stop, station, office and agency, now maintained, conducted or used in South Carolina by any railroad, express or telegraph company doing business in this State, for the transaction of business with the public is hereby formally established and located at the point and on the premises where the same is now being so maintained and conducted. No such depot, flag stop, station or agency, as aforesaid, now established, or that hereafter may be established, pursuant to orders made

by the Commission, or voluntarily by such company, or otherwise, shall be closed, removed, suspended, discontinued or abolished without authority granted by the Public Service Commission. (Written application shall be made to the Public Service Commission for authority to post notice to the public setting further the fact that thirty days from date of said notice application for such closing, removal, suspension, discontinuance or abolition will be made to the Public Service Commission.)* Said notice to the public shall be posted in a conspicuous place at or near such depot, flag stop, station, office or agency, for not less than thirty (30) days, and a copy of such notice sent to the Public Service Commission. At the expiration of that time, unless protest has been received from the public by the Public Service Commission and the company so notified, then formal application may be made to the Public Service Commission for authority to close, remove, suspend, discontinue or abolish such depot, flag stop, station, office or agency, as the case may be. Should protest be received, the Public Service Commission will notify the company involved, who may, if desired, ask for a formal hearing in the matter, and the Commission will order such hearing if, in its judgment, same is necessary.

Rule 45 of the South Carolina Public Service Commission promulgated under Section 8415 of the Code of Laws of South Carolina (1942) and filed in the office of the Secretary of State of South Carolina on June 30, 1937.

Rule No. 45. Erecting depots. All railroads in this State are required to erect within the time specified by the Commission union or other depots at such points as the travel and public interest shall in the judgment of the Commission justify.

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* This sentence omitted through error in the printing of the Code.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 502

ATLANTIC COAST LINE RAILROAD COMPANY,
PETITIONER

v.

THE STATE OF SOUTH CAROLINA EX REL THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA, ET AL., RESPONDENTS

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION, AMICUS CURIAE

STATEMENT

This brief is filed by the Interstate Commerce Commission at the court's request to express its views on some of the questions presented by the petition for writ of certiorari herein. The facts show:

The Charleston Union Station Company was incorporated in 1902 by an act of the South Carolina legislature for the purpose of constructing, maintaining and operating a union passenger station in the City of Charleston, S. C. (R. 16). The Union Station Company is owned jointly by the Atlantic Coast Line and the Southern Rail-

way (R. 16). When constructed the station was served directly by the Coast Line over its own tracks and by the Southern Railway, pursuant to a trackage agreement dated January 1, 1907, and a supplemental agreement dated March 8, 1916, between the Coast Line and the Southern under which the Southern operated over the tracks of the Coast Line for a distance of 11,487 feet, so as to serve the union station (R. 503, 514, 587). For 40 years, or until January 10, 1947, the two railroads afforded passenger station facilities to the public at the union station (R. 145).

On January 10, 1947, the station was considerably damaged by fire (R. 586), and after negotiations between the railroads and the State Commission, which failed to result in an agreement looking to the reestablishment of suitable passenger station facilities for the city, its residents, and the traveling public generally, a complaint was filed with the State Public Service Commission, which, after the usual administrative proceedings, on June 14, 1950, ordered the Coast Line and the Southern to rebuild the passenger station in the City of Charleston and to make monthly reports to the State Commission as to the progress of the building operations (R. 584).

Upon review of this order, the Court of Common Pleas of Charleston County sustained the order of the State Commission (R. 584–96), and the Supreme Court of the State affirmed that

decision and adopted the opinion of the lower court as its own (R. 583–84).

Following the January 1947, fire, the trackage agreements of 1907 and 1916 were cancelled as of January 25, 1947 (R. 587), on the ground that the joint use by the Southern of the Coast Line's tracks was no longer necessary (R. 587). The record shows that the Union Station Company received approximately $158,000.00 from insurance sources in settlement of losses sustained in the fire, and that none of this amount has been used to replace any portion of the burned station (R. 587). Since the fire the Coast Line passenger trains now use the company's North Station, about seven miles outside the city, with bus connections to the center of the city, while the Southern has established a temporary passenger station by the use of old passenger cars at Line Street in Charleston (R. 587–588). It was the Southern's proposal to provide its own station on Ann Street for its passenger business (R. 588), but the State Court sustained the findings of the State Commission that such proposal was not satisfactory, in that this location for a station would result in a disruption of traffic and increase the probabilities of accidents (R. 592).

Evidence was introduced by the carriers in the State Court, although apparently not before the State Commission (R. 591), to show that to reproduce the burned building would cost approximately $400,000.00, while the state author-

ities offered evidence in court tending to show that a suitable station could be constructed for something less than the amount of insurance received (R. 591). The lower court construed the Commission's order as not contemplating an exact duplication of the 1907 station (R. 591); sustained the findings of the State Commission as to the inadequacy of the North Station of the Coast Line and the facilities proposed by the Southern (R. 592), and overruled the claim of the railroads that because the Southern now has no access to the station site, it would have to extend its lines to comply with the order of the State Commission, or enter into a new trackage agreement with Coast Line authorizing it to do so; in either event, the claim was, a certificate from the Interstate Commerce Commission is required (R. 589). The lower court orerruled this contention on the ground that the railroads' attempted cancellation of the trackage agreement without authority was invalid and there never had been a lawful termination of that agreement, so no new authorization was required (R. 590).

In answer to the contention of the carriers that the order of the State Commission is a burden on interstate commerce because of the expenditures required to comply therewith, and the losses which they claim will result from the operation of the union station (R. 590), the lower court referred to the "well-settled" rule that the State

"may require railroad companies to provide reasonably adequate and suitable facilities for the convenience of the communities served by them, and that railroads may be compelled by State legislation to establish stations at proper places for the convenience of their patrons, including union stations" (R. 592).

The matter of expense, the Court held, is an important criteria to be taken into account in passing on the reasonableness of the order (R. 592). Such a question, the court said, is for the Interstate Commerce Commission (R. 595). The court concluded that the carriers had not made out a case that the expenditures required would constitute an undue burden on interstate commerce (R. 595).

As a basis for its conclusion, the court below found that the "evidence shows that a suitable station * * * of modern design and construction can be provided on the site of the burned station for not in excess of the amount of insurance received on account of the fire damage." (R. 591–92.) From the judgment of the State Court sustaining the order of the State Commission (R. 596), this petition for writ of certiorari was filed. The petition presents the following questions:

1. Is a certificate of public convenience and necessity required from the Interstate Commerce Commission before the Southern Railway Company can once more, under a trackage agreement,

operate over the line of the Atlantic Coast Line to reach the Charleston Union Station, where such operation had ceased without the approval of the Interstate Commerce Commission?

2. Does the order of the State Commission, because of the expenditures required and the losses it is claimed will result from the operation of the union station, constitute an undue burden on interstate commerce, which can not be imposed by state authority, but only after order by the Interstate Commerce Commission?

ARGUMENT

I

A trackage agreement under which one carrier by railroad engaged in interstate commerce operates over the tracks of another, may not be entered into by the affected carriers, or terminated by them, without an appropriate certificate from the Interstate Commerce Commission

The Transportation Act of 1920 imposed upon the Interstate Commerce Commission new and affirmative duties, the dominant purpose of which was to see that an adequate system of transportation was provided for the people of the United States, instead of the individual case approach, which was the basis of earlier legislation. *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.,* 257 U. S. 563, 584; *Dayton-Goose Creek Ry. Co.* v. *United States,* 263 U. S. 456, 478; *New England Divisions Case,* 261 U. S. 184, 189–190. Among

the new duties imposed upon the Commission by that Act were the requirements of the construction and abandonment provisions, section 1 (18), (19), (20) and (22) (49 U. S. C. sec. 1 (18) et seq.). Section 1 (18) prohibited carriers by railroad from constructing new lines, or extending their old lines, or acquiring or operating any line or extension, without a certificate of public convenience and necessity from the Commission. The same paragraph prohibited the abandonment of all or any portion of a line of railroad, or the operation thereof, without a similar certificate. Section 1 (19) prescribed the procedure to be followed by the carriers and the Commission in such cases, and paragraph (20), among other things, provided penalties for violations of the paragraph, and injunction proceedings to compel compliance therewith. At the time this law became effective, many railroads operated segments of their lines under lease or by reason of trackage agreements with owning carriers. Many of these agreements had been entered into prior to the pertinent provisions of section 1; many more were attempted to be supplemented by new arrangements to be effected after the date of enactment, and some, having a definite term of years, expired after section 1 (18) was enacted. Questions soon arose in Commission proceedings whether trackage arrangements between carriers were subject to its jurisdiction and whether such arrangements could

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be supplemented or terminated after the act's effective date without Commission approval.

An early case was *Chicago & Alton R. Co.* v. *T., P. & W. Ry. Co.,* 146 I. C. C. 171, (1928) where one of the parties to a trackage agreement under which the Alton had been operating over the tracks of the owning company, the T. P. & W., for many years, sought to cancel the agreement. The Commission said that while it never considered the precise question here presented (p. 180), and although there is no express reference in paragraphs (18) and (20) of Section 1 covering the extension or withdrawal of operations under lease, the Commission held it had jurisdiction over the abandonment of the *operation* of the railroad under a trackage agreement just as it had over the inception of such an arrangement (p. 181). Operations under trackage rights cannot lawfully be discontinued, the Commission concluded, without a certificate from it (p. 182). (See also *Gulf, Mobile & Ohio R. Co. Purchase, Securities,* 261 I. C. C. 405, 431–432; *Fort Worth & Denver City Ry. Co. Trackage,* 170 I. C. C. 677; *Lehigh Valley R. Co. Abandonment of Operation,* 202 I. C. C. 659). In *Pooling of Ore Traffic in Wisconsin and Michigan,* 210 I. C. C. 599, the Milwaukee had transported iron ore for a number of years over the rails of the Escanaba and Lake Superior Railroad, under a long-term trackage agreement. New arrangements for the haul-

ing of this ore were made, so the use of the tracks of the Escanaba became unnecessary. The Commission held that the Milwaukee could not lawfully abandon operation over the rails of the Escanaba without a certificate from it. Ever since its decision in the *Chicago & Alton case, supra,* the Commission has advised carriers that operations under trackage rights may not be abandoned without a certificate obtained under section 1 (18). This construction of the Act by the Commission has received the approval of this Court. In *Transit Commission* v. *United States,* 289 U. S. 121, 128, this Court held that the reasons for the exercise of paramount federal authority are just as applicable to expenditures made through construction or operation of new mileage as they are to inadequate rentals or extortionate exactions under trackage agreements, and concluded: "The provisions of paragraph (18) undoubtedly apply to the operations under trackage agreements such as that under consideration." (p. 129) And in *Thompson* v. *Texas Mexican R. Co.,* 328 U. S. 134, 144–145, this Court said: "Section 1 (18) embraces operations under trackage contracts, as well as other types of operations. * * * Though the contract were terminated pursuant to its terms, a certificate would still be required under § 1 (18)."

Since the enactment of the Transportation Act of 1940, the jurisdiction of the Commission over

the acquisition of trackage rights has been under section 5 (2) (a) (ii) and not under section 1 (18). Section 5 (2) (a) (ii) reads as follows:

> "It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—
>
> (ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto."

In *Chicago, B. & Q. R. Co. Control,* 271 I. C. C. 63, 67, the Commission pointed out that the legislative history of the provisions of section 5 (2) relating to trackage rights, added by the Transportation Act of 1940, shows that it was the intent of Congress to transfer the Commission's jurisdiction over acquisition of trackage rights from section 1 (18)–(20) to section 5 (2).

In *International-Great Northern R. Co. Trustee Trackage Rights,* 275 I. C. C. 27, 33, the Commission held that as the transaction relates to operations by applicant over a track already in place and operated by another carrier, it is governed by section 5 (2) and not section 1 (18).

In *Missouri Pac. R. Corp. in Nebraska Trustee Operation,* 247 I. C. C. 653, the Commission approved section 5 (2) applications wherein two carriers sought separate authorities to operate under trackage rights over short distances on the tracks of another carrier. The Commission

declined to approve one of the terms of the trackage agreements, the purport of which would authorize the carriers to withdraw from the agreement on notice, the Commission saying:

> "Our approval of the proposed transactions herein, * * * will be contingent upon a proper showing being made at the time the agreement is to be terminated that the public convenience and necessity at that time permit abandonment of the operations authorized herein."
> (p. 656)

It is the view of the Interstate Commerce Commission that as the Southern Railway Company never was legally released from the provisions of the trackage agreement under which it operated over a portion of the line of the Atlantic Coast Line to reach the Charleston union station, such agreement continues in force and effect and it is unnecessary at this time to secure the Commission's approval of the terms of such agreement.

II

In the absence of rearrangement and relocation of interstate railroad tracks, involving the abandoment of old lines and the construction of new lines, and where as here there is no issue of undue prejudice or preference, the Interstate Commerce Commission has no jurisdiction to require the construction of union passenger stations

In *Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, decided July 6, 1925, the Commission found that it had no jurisdiction to require

the construction of union passenger stations where there is no issue of undue prejudice or preference, and the providing of the union station and appurtenances constitutes the major consideration, and the rearrangement, relocation or joint use of the main line and terminal tracks is incidental thereto. In *Oklahoma Corp. Commission* v. *A., T. & S. F. Ry. Co.,* 142 I. C. C. 251, involving the construction of a new union station in Oklahoma City, the Commission found that "neither the added operating costs nor the capital outlay necessitated by the new construction will impair the ability of the applicants to perform their other duties to the public." (p. 254.) In *Railroad Comm.* v. *Southern Pac. Co.,* 264 U. S. 331, this Court held that "Such a certificate [of public convenience and necessity] is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals." (p. 344.) In *Oklahoma Corp. Commission* v. *A., T. & S. F. Ry. Co.,* 101 I. C. C. 647 (1925) the Commission held that it may be possible to construct a new station at Oklahoma City adequate to serve the needs of the public at a cost less than estimated, but it did not consider it its duty under the law to make independent investigations in order to determine the feasibility and lawfulness of undefined plans. (p. 652.) It held (p. 655), that "in determining

whether such public convenience and necessity exists as will justify an affirmative finding we must weigh the amount of convenience which would result from the union station against the probable cost of the project to the defendant railroads."

When the Commission's decisions in *Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421 and 142 I. C. C. 489, came before this Court for review in *I. C. C.* v. *City of Los Angeles,* 280 U. S. 52, involving the construction of a new union station at a new site in Los Angeles, the Court sustained the Commission's conclusion that it did not have jurisdiction to order construction of the station. The Court said (at p. 68) that if the Commission "was to be clothed with the power to require railroads to abandon their existing stations and terminal tracks in a city and to combine for the purpose of establishing in lieu thereof a new union station, at a new site, that power we should expect to find in congressional legislation." And the Court said (p. 69), "To attribute to Congress an intention to authorize the compulsory establishment of union passenger stations the country over, without special mention of them as such, would be most extraordinary." After the State Commission subsequently issued an order requiring the railroads serving Los Angeles to erect a new union station in that city, the order was sustained in *A., T. & S. F. Ry. Co.* v. *Railroad Commission of California,* 283 U. S.

380 (1931). The Court in that case held (p. 395) that "Railroad carriers may be compelled by state legislation to establish stations at proper places for the convenience of their patrons * * *. The question in each case is whether, in the light of the facts disclosed, the regulation is essentially an unreasonable one * * * And 'the matter of expense is an important criterion to be taken into view in determining the reasonableness of the order.'" (p. 396.)

As no relocation of tracks is necessary in the case now before this Court, to comply with the order of the State Commission, no approval by the Interstate Commerce Commission was necessary before the railroads could be ordered by the State Commission to construct the station at Charleston.

III

There is no evidence to justify a finding that the expense to the carriers of complying with the order of the State Commission would place such an undue burden upon interstate carriers as would prevent them from performing their duties to the public

In *Railroad Commission* v. *Southern Pacific Company, supra,* this Court recognized that exercise by a State Commission of the power to direct the construction of local union stations might involve such an unreasonable demand upon the carriers or place such an undue burden upon interstate commerce to the impairment of their ability to perform their duties to the public, that

a finding by the Commission is required that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public. (p. 347.)

We do not think the instant case comes under that holding. The lower court had in mind that the matter of expense is an important criteria to be taken into account in passing upon the reasonableness of the order (R. 592), and the fact that such an expense might be claimed to be such an unreasonable one as to make it a matter for the Interstate Commerce Commission (R. 595). Apparently the railroads did not introduce any evidence before the State Commission concerning the cost of reconstructing the burned station (R. 591). Although they did introduce evidence in the State Court to show that reproducing the burned building would cost approximately $400,000.00, the State authorities offered evidence in the lower court tending to show that a suitable station could be constructed for something less than the amount received for insurance. (R. 591). The lower court construed the order of the State Commission as not contemplating an exact duplication of the old station (R. 591) and found that the "evidence shows that a suitable station * * * of modern design and construction can be provided on the site of the burned station for not in excess of the amount of insurance received on account of the fire damage." (R. 591–592). There is

nothing in this record from which the Interstate Commerce Commission can conclude that to require the railroads to spend even the maximum named by them as the cost of rebuilding of $400,000.00 (from which sum $158,000.00 collected as insurance as a result of the fire should be deducted) would place an undue burden on these carriers or on interstate commerce. We view this case as falling within the well-settled principle referred to by this Court in *Southern Pacific Co.* v. *Arizona,* 325 U. S. 761, 767, as follows:

> "* * * When the regulation of matters of local concern is local in character and effect, and its impact on the national commerce does not seriously interfere with its operation, and the consequent incentive to deal with them nationally is slight, such regulation has been generally held to be within state authority. * * *."

Respectfully submitted,

EDWARD M. REIDY,
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Interstate Commerce Commission.

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